

**** E-filed August 28, 2012 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID PETRINI; BRAZIL AGENT 003,

No. C12-04373 HRL

Plaintiff,

v.

**ORDER DENYING APPLICATION
TO PROCEED IN FORMA PAUPERIS
AND DISMISSING THE COMPLAINT**

JOE BIDEN, VICE PRESIDENT,
REPRESENTING THE UNITED STATES
OF AMERICA,

Defendant.

Plaintiff David Petrini has filed what he calls a “pay or quit” complaint against Vice President Joe Biden on behalf of the United States, alleging that the United States government owes him two billion dollars. Plaintiff contends that he, his two “guardians” and “their three cats . . . have been kidnapped into level 2 post post [sic] underground and we live in level 2.” Complaint p. 4. Although plaintiff’s complaint is extremely sketchy and unclear, it appears that he is alleging that the United States government stole plaintiff’s money and other assets and “illegally strip mined” him. Id. He demands that Vice President Biden “or his clone” meet the plaintiff on October 3, 2012 for a “settlement mediation,” and that both Biden and the undersigned bring “nuclear medical PC ion boxes” to the October 3 meeting. Id. Plaintiff demands that the court order Biden, on behalf of the government, to pay plaintiff \$2 billion at the “mediation.” Id. Plaintiff also notes that the person living at the residence he has listed as his mailing address is his clone. Plaintiff has applied to

1 proceed *in forma pauperis* in this action. See Dkt. No. 2. Plaintiff has consented to magistrate judge
2 jurisdiction for all purposes, including trial, pursuant to 28 U.S.C. § 636(c). Dkt. No. 5.

3 A district court may deny *in forma pauperis* status and dismiss a complaint if it is frivolous.
4 See 28 U.S.C. § 1915(d). A complaint is frivolous if “it lacks an arguable basis either in law or in
5 fact.” Neitzke v. Williams, 490 U.S. 319, 325, 104 L. Ed. 2d 338, 109 S. Ct. 1827 (1989). The term
6 “frivolous . . . embraces not only the arguable legal conclusion, but also the fanciful factual
7 allegation.” Id. When determining whether to dismiss a complaint as “frivolous” under 28 U.S.C. §
8 1915(e)(2)(B)(i), a court has “the unusual power to pierce the veil of the complaint’s factual
9 allegations,” meaning that it “is not bound, as it usually is when making a determination based
10 solely on the pleadings, to accept without question the truth of the plaintiff’s allegations.” Denton v.
11 Hernandez, 504 U.S. 25, 32 (1992) (quoting Nietzke, 490 U.S. at 327). Pro se complaints are to be
12 construed liberally. Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972).

13 Petrini demands that this court order the federal government to pay him two billion dollars,
14 and contends quite vehemently that “this case can not [sic] be denied.” He demands that a
15 “settlement mediation” take place on October 3, 2012 and that both Vice President Biden (or his
16 clone) and the judge in this matter appear with “nuclear medical PC ion boxe[s] on hand.”
17 Complaint p. 4. He also attaches some documentation indicating that he has attempted to file suit in
18 California state court and in the United States tax court, presumably to no avail. See Complaint pp.
19 6-10. The substance of plaintiff’s allegations consists of the following: (1) he, along with three cats
20 and two other individuals, has been kidnapped and now lives underground; (2) his clone lives at the
21 residence listed as his mailing address; (3) the government stole \$2 billion from him; and (4) his
22 “mind is sonic transmitting until [he] get[s] the settlement.” Complaint pp. 4-5.

23 The Ninth Circuit has expressly held that frivolous litigation “is not limited to cases in which
24 a legal claim is entirely without merit [A] person with a measured legitimate claim may cross
25 the line into frivolous litigation by asserting facts that are grossly exaggerated or totally false.”
26 Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1060-61 (9th Cir. 2007). Here, the court finds
27 that plaintiff has asserted “fanciful factual allegation[s]” that must be considered “totally false.” He
28 has not offered any facts to support the plausibility of his claim for two billion dollars. The court has

1 thoroughly reviewed plaintiff's complaint and has concluded that plaintiff does not allege facts that
2 would permit this court to exercise jurisdiction. As presently pled, the complaint does not offer, and
3 the court is not aware of, any basis for federal jurisdiction.

4 Accordingly, plaintiff's application to proceed *in forma pauperis* is DENIED and this
5 complaint is DISMISSED without prejudice pursuant to 28 U.S.C. § 1915(d).

6 **IT IS SO ORDERED.**

7 Dated: August 28, 2012

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10 HOWARD R. LLOYD
11 UNITED STATES MAGISTRATE JUDGE
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1 **C12-04373 HRL Notice will be electronically mailed to:**

2 Dave Petrini
3 703 Alexander Street
4 Livermore, CA 94550

5 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
6 **registered for e-filing under the court's CM/ECF program.**

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